

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1148561 AND ALL
OTHER SEAMAN DOCUMENTS
Issued to: RAYMOND KENNEDY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1617

RAYMOND KENNEDY

This appeal has taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 12 October 1966, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents for two months outright plus three months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a fireman-watertender on board the United States SS STEEL TRAVELER under authority of the document described, on or about 10 July 1966, Appellant failed to join his vessel upon its departure from Hong Kong bound for sea.

Appellant was not present or represented at the hearing. The Examiner entered a plea of not guilty on behalf of Appellant and conducted the hearing in absentia.

The Investigating Officer introduced in evidence the shipping articles showing Appellant to be a member of the crew at the time in the specification. Relevant entries were read into the record. The Investigating Officer also introduced a certified copy of entries in the ship's Official Logbook.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then served a written order on Appellant suspending all documents, issued to Appellant, for a period of two months outright plus three months on twelve months' probation.

The entire decision was served on 16 November 1966. Appeal was timely filed on 21 November 1966.

FINDINGS OF FACT

On or about 10 July 1966, Appellant was serving as a

fireman-watertender on board the United States SS STEEL TRAVELER and acting under authority of his document while the ship was in port at Hong Kong. The ship departed at about 1800 hours of that day and Appellant failed to join. He rejoined at Cam Ranh, Vietnam on 16 July 1966.

Appellant has a prior record of misconduct consisting of failure to perform, warned 3 November 1964; absent without leave, two months suspension on twelve months' probation, February 1965; and failure to perform, four months suspension, February 1966.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. A copy of the hearing transcript was furnished Appellant at his request on 5 December 1966. Although material in support of the appeal and grounds therefor were submitted on 13 December 1966, they were overlooked through inadvertence. A prior Decision of the Commandant affirming the order of the Examiner, was entered herein on 18 May 1967. Because of the oversight noted above, the grounds for appeal were not considered. Thus, I am further considering this matter on the present record and in the light of the grounds urged by Appellant in support of his appeal. It is contended that Appellant's failure to appear at the hearing resulted from a misunderstanding between himself and the Investigating Officer as to when the hearing would be held; that had he been properly apprised of the date of hearing, he would have appeared and introduced evidence in his behalf; and that the order of the Examiner is excessive. It is requested that this proceeding be remanded for purposes of permitting Appellant to introduce evidence. In support of this request, two letters of commendation have been submitted together with an affidavit of Appellant wherein he indicates that, upon returning to the ship on the day of its departure, he found himself on the wrong dock and apparently was unable to reach the proper dock in time to join the ship. He did not deem this unusual allegedly because all docks in Hong Kong look alike. His affidavit also indicates that he was sea at the time the hearing was held, but that he had been informed by a Coast Guard Official to take such voyage and that the hearing would be held upon his return.

APPEARANCE: Bassett, Donaldson & Hafer, Attorneys at Law,
 Seattle, Washington, by Paul J. Fisher, Esq.

OPINION

Most of the matters raised on appeal concern the requested remand.

Notice of the hearing was served on Appellant 8 September 1966, and he was advised that, if he failed to appear thereat, the hearing would be conducted in his absence. The notice was not defective in any respect and the sole basis for Appellant's request consists of a bare allegation that, subsequent to his receipt of such notice, he was informed that the hearing would not be held until he returned from shipping out. If the proceeding is remanded, Appellant intends to introduce evidence as to the reasons for his failure to join the ship and also evidence of a commendatory nature.

I can ascertain no reason for delaying the outcome of this proceeding by remanding it for further hearing. Consideration of the evidence, which Appellant seeks to introduce would not justify a conclusion different from that reached in the prior decision that the charge and specification have been proved. This evidence merely relates to the severity of the penalty assessed against Appellant. However, in view of Appellant's prior history of misconduct, I am of the opinion that, despite any such evidence, the Examiner's order is not excessive. The request for remand is, therefore, denied.

ORDER

The order in the prior decision, dated 18 May 1967, affirming the order of the Examiner, is AFFIRMED.

W.J. SMITH
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 27th day of July 1967.

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